

Atty. Docket No. 37388-405800

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Brash, Kenneth George ) Title: Residual Gas Removal Method  
Serial No.: 10/582,320 ) Group Art Unit: 3721  
Filed: February 26, 2007 ) Examiner: John R. Paradiso

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## DECLARATION UNDER 37 CFR 1.132

Kenneth George Brash states:

1) I am the inventor for US patent application serial no. 10/582,320 and am a director of Nordiko Quarantine Systems Pty Ltd ("Nordiko"). Nordiko's parent company is Asiaworld Shipping Services Pty Ltd ("Asiaworld" being the assignee of US serial no. 10/582,320; with Nordiko being the licensee of US serial no. 10/582,320). Nordiko is an Australian company whose Internet address is <http://www.nordiko.com.au/>.

2) I have worked in the field of entomology for more than 30 years and in the field of fumigation for more than 10 years. I have the following qualifications:

- High School Teaching Diploma in General Science
- BSc Zoology (Entomology)
- AIM Diploma in Marketing
- Urban and Rural Fumigation Certificate
- Smartrain - Chemical Application Certificate
- Fumigation License

3) I am a Scientific Member of the Royal Zoological Society of NSW, a member of the Australian Entomological Society, a professional body affiliated to CSIRO (Commonwealth Scientific & Industrial Research Organisation) Entomology, a member of the Entomological Society of America and a member of the Society for Insect Studies. I have been asked to present papers at various scientific based conferences, such as the MBAO (Methyl Bromide Alternatives Outreach) in the US, the OEWG (Open Ended Working Group) meeting of the Parties to the Montreal Protocol, the CSIRO Grains Conference, the CSIRO Timber Forum and several others. I have worked with Dr Yonglin Ren, CSIRO, on an experiment into the Methyl Bromide Penetration into Timber Blocks and Sorption and Desorption of Methyl Bromide on Timber Blocks, which although not published yet, is available for study.

4) In the course of that work, I have become very familiar with international fumigation processes and practices. I observe that Nordiko is a recognized world leader in the field of fumigation and has developed a range of apparatus and processes that now find widespread commercial use in Australia, USA, Europe, Chile etc and that are both cost effective and environmentally safe. Further details on Nordiko's activities can be found at its Internet website (*ibid.*).

5) During my time working in the field of entomology and fumigation I have developed considerable knowledge of the various processes, apparatus and practices for fumigating, inter alia, produce in containers, and especially in ISO general purpose shipping containers. For example, I am fully aware of the process and apparatus differences between fixed fumigation installations as opposed to Nordiko's world's best highly mobile and portable apparatus and practices. As a result of my international reputation in entomology and my position and experience in Nordiko, and as a result of Nordiko's dealings with many of the world's largest shipping and produce companies, I have been compelled to become extremely knowledgeable about all aspects of fumigation. In addition, to remain as knowledgeable as possible about developments in this field, I regularly attend international technical conferences and meetings, I subscribe to various journals, and I have and receive regular communications with and from companies operating in the fumigation field. By way of example, this year I will be attending and presenting a paper at the MBAD Conference (<http://mbao.org/>) in late October 08 in Orlando, Florida. Further, Nordiko's technical expertise is used to support the operations of such shipping and produce companies, so that I have as good an up-to-date working knowledge as possible of the industry and the various fumigation processes, apparatus and practices in current use.

6) I have been provided with, and reviewed, Lovegrove et al EP0136042 ("the Lovegrove patent"). I have been informed that the Lovegrove patent is the basis of an obviousness objection raised in respect of the present US patent application serial no. 10/582,320. Upon review of the Lovegrove patent, I am able to fully comment on its significance. In this regard, I have been involved with the ongoing examination of the present US patent application serial no. 10/582,320, and corresponding applications in various jurisdictions.

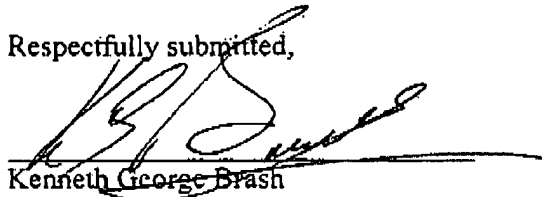
7) I note that the Lovegrove patent relates to methods for the carriage of comestibles in containers. More specifically, the Lovegrove patent is directed to monitoring oxygen and carbon dioxide levels within a *modified* 'conventional' shipping container and making adjustments to the oxygen or carbon dioxide levels to maintain optimal levels to minimize the respiration of the comestibles therein. The Lovegrove patent, at column 2 lines 24-56, is concerned with providing a controlled low oxygen atmosphere for fruits, vegetables, plants, etc, which continue to respire after harvesting. The low oxygen atmosphere is intended to make them 'live' more slowly and ensure a high quality, fresh end product. The atmosphere within the container is thus being controlled for the duration of transport and/or storage. As described in the body of the Lovegrove patent, the container is flushed with a high-nitrogen low-oxygen gas to lower the oxygen content of the environment towards the desirable level. The environment is subsequently positively controlled by an automatic controller which controls leakage between the ambient and the interior of the container to provide oxygen and remove carbon dioxide. There is nothing in the disclosure of the Lovegrove patent to suggest use of this system for the removal of a residual gas, such as a toxic fumigant, from inside a conventional shipping container upon arrival at its destination. In fact, the Lovegrove patent is for the maintenance of specific gas levels throughout transportation to better preserve the quality and freshness of comestible and plant items.

8) On the other hand the invention of US patent application serial no. 10/582,320 relates to a method for removing a residual gas from inside a conventional shipping container. This allows for trapped residual gases, such as fumigants, to be extracted from the container with minimal risks to persons accessing the container. There is thus no reason why a person of ordinary skill in the field of fumigation would consider the Lovegrove reference

of relevance to the removal of residual gas from a conventional shipping container. Such a person would, for the reasons outlined above, not consider the Lovegrove reference at all when designing a means for removing residual gas from inside a conventional shipping container.

The undersigned acknowledges that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001), and may jeopardize the validity of the application or any patent issuing thereon. The undersigned swears that all statements made in this declaration of his own knowledge are true, and that all statements made on information and belief are believed to be true.

Respectfully submitted,



Kenneth George Brash

Date: August 8, 2008